

**General Terms and Conditions of Purchase (GTCP)**  
(Status: 1<sup>st</sup> January 2014)



**0 Definitions**

- 0.1 "We", "us", "our", "PWO" and similar pronouns refer to PWO Canada Incorporated; and
- 0.2 "Supplier" refers to the addressee of the relevant purchase order and any permitted subcontractor and/or assignee.

**1 General and scope**

- 1.1 These General Terms and Conditions of Purchase ("GTCP") will apply only where referred to in any purchase order (the "order" or "orders") issued by us and shall apply to every such order in which reference is made to the GTCP regardless of when the order is issued.
- 1.2 We will not be bound by any contrary or differing terms and conditions of the Supplier unless we have expressly agreed to them in writing.
- 1.3 We may change any of the terms of the GTCP at any time without prior notice. The Supplier is responsible to inquire about and seek a copy of the then current GTCP prior to accepting any order. Acceptance of any order is acceptance of the GTCP as it exists at that time..

**2 Order and documents accompanying the order**

- 2.1 The Supplier shall notify the acceptance or the rejection of our order within a period of two (2) weeks. If we have not received a confirmation of acceptance of our order in writing from the Supplier within two (2) weeks of the order date, the order shall no longer be binding on us.
- 2.2 Master agreements, their delivery schedules and individual orders shall become binding within 10 days of their creation date at the latest if the Supplier has not objected by then.
- 2.3 In as far as it is reasonable to do so, we shall have the right to require the Supplier to make modifications to the construction and design of the Products (as defined in the order and/or the Master Agreement and/or the Master Supply Agreement). The consequences thereof, particularly with respect to additional or reduced costs and delivery dates, shall be determined by joint agreement between the parties, acting reasonably.

**3 Prices and terms of payment**

- 3.1 The price stated in the order shall be binding. Unless a separate written agreement has been made to the contrary, the prices in the order are quoted with free delivery to our designated facility or delivery destination with all customs duties (DDP as per Incoterms ® 2010), packaging costs and transport insurance paid by the Supplier. The Supplier shall not be entitled to claim or receive a return of the packaging unless separately agreed to by the parties.
- 3.2 The prices in the order do not include statutory value-added tax, harmonized sales tax or similar tax (collectively "VAT"), unless indicated on the face of the order.
- 3.3 Deliveries will only be accepted by us, and invoices from the Supplier can only be processed by us, if they state the order number and the parts or item number, as specified in our order. The Supplier is responsible for all consequences resulting from failure to comply with this obligation.

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- 3.4 Unless otherwise agreed in writing, we will pay the purchase price within fourteen (14) days with a cash discount of 3% (3/100) of the price of the order; within thirty (30) days with a cash discount of 2% (2/100) of the price of the order; or after sixty (60) days without discount, in each case calculated from the date of receipt of the delivery and invoice. The time allowed for payment shall start to run on whichever of these dates is later. If deliveries are accepted early by us, the due date of payment shall only start to run in accordance with the above from the agreed delivery date.
- 3.5 The Supplier shall immediately provide any certificates of origin for the delivered Products that we request, in writing, properly signed and with all the customary details filled out. The Supplier shall immediately notify us in writing, without being requested to do so, if the details on the certificates of origin for the delivered Products are no longer accurate. The above applies equally to VAT certificates in the case of foreign deliveries and deliveries within Canada. The Supplier shall notify us immediately if any Products to be delivered, or part thereof, are subject to export restrictions under the Laws of Canada or any other applicable law.
- 3.6 If any delivered Products are defective, we shall have the right to withhold a proportion of the payment equivalent to an amount up to twice the value of the defective Products until delivery of the Products has been properly effected. The time periods for discounts set out in section 3.4 shall start to run from the date the Products have been delivered to us free from all defects.
- 3.7 Unless we have agreed in writing, the Supplier shall not have the right to assign its claims against us or to have these debts collected by third parties.

**4 Delivery period**

- 4.1 The delivery period or date specified in the order is binding on the parties. Once the delivery period or date expires, the Supplier shall be deemed to be in default without a due date needing to be set.
- 4.2 The Supplier is obligated to give us prompt written notice if any circumstances arise or become apparent which indicate that the binding delivery period or date cannot be adhered to.
- 4.3 In the case of a purchase agreement/master agreement, the Supplier agrees and undertakes to be ready to deliver at any time within a fixed delivery period and to duly comply with our delivery schedules.
- 4.4 If the Supplier does not perform its contractual obligations hereunder by the due date or does not perform as agreed whether hereunder, under the order, or under the relevant purchase agreement/master agreement, we shall be entitled to enforce and exercise any/all of our legal rights. In the event that we have agreed to a reasonable extended deadline and such extended deadline expires without us receiving delivery of the Products, we shall have the right to terminate the order and to claim damages.
- 4.5 The acceptance by us of late Products, deliveries or services hereunder shall not be construed or act as a waiver of our right to claim damages against the Supplier.
- 4.6 Upon any and every failure of the Supplier to deliver product as and when specified in an order, the Supplier shall become liable to us for all damages suffered, in respect of which the the Supplier and we have pre-estimated the same to consist of at least 0.3% (3/1000) of the amount of the order for each day of delay to a maximum of 5% (5/100) of the order amount. The pre-estimated damages shall not affect our right to claim further damages caused by

such delay, although the pre-estimated damages may be deducted from such further damages if such pre-estimated damages has been paid by the Supplier.

## **5 Reservation of title and third-party rights**

The delivery of the Products shall be provided without reservation of title and free from any liens, claims or encumbrances, charges or other third-party rights. If the foregoing should not be possible for the Supplier, any third-party rights in and to the Products and deliveries must be disclosed immediately, in writing to us, of the Supplier's own accord. If we become aware of any third-party rights in and/or to the Products and deliveries, we reserve the right to terminate the order without paying damages.

## **6 Liability**

Except as expressly stated hereunder or in the order, our liability, at law or in equity, arising under any contract or act of negligence or any/all applicable federal, provincial and municipal statutes, laws, rules, by-laws, regulations, ordinances and orders (collectively the "**Laws**"), arising out of, or in any way related to any of our obligations hereunder or pursuant to the order, is limited in the aggregate, to money damages, the amount of which shall not exceed the total amount of the price of the Products set out in the order. Except as otherwise expressly stated hereunder or in the order, we shall not have any liability whatsoever for any indirect, special, incidental or consequential damages, loss of profits, revenue or other economic loss even if advised of the possibility thereof.

## **7 Intellectual property rights and confidentiality**

- 7.1 The Supplier represents and warrants to us that all Products and deliveries shall be free of any third-party rights and, in particular, that no patents or other intellectual or industrial property rights of third parties shall be violated/prejudiced by the delivery and use of the Products.
- 7.2 If a third party brings a claim or demand against us on the grounds outlined in section 7.1, the Supplier shall indemnify and hold us harmless against any such claims or demands or any costs, expenses, liabilities, losses and/or damages arising therefrom on first written demand from us.
- 7.3 The Supplier's obligation to indemnify us extends to all expenses, including court costs and lawyers' fees, that we incur as a result of or in connection with a third party asserting a claim or demand against us.
- 7.4 We reserve title to and copyright of all illustrations, drawings, calculations and/or other documents. Such illustrations, drawings, calculations and/or other documents must be used exclusively for production of the Products based on the order, kept secret from third parties, and must not be made accessible to third parties without our express written consent. After processing of the order has been completed, such illustrations, drawings, calculations and/or other documents must be promptly returned to us without a specific request on our part.
- 7.5 The Supplier and PWO agree to treat all commercial and technical details that become known to each of party in the course of the business relationship as confidential and not to disclose same to third parties. The same obligation must be imposed by the Supplier on any subsuppliers of the Supplier carrying out work under the order.
- 7.6 The Supplier may only disclose the business relationship created by the order for advertising purposes if PWO has given its prior written consent.

## **8 Competitive ability**

- 8.1 The Supplier is urged to continue to maintain and improve its competitiveness, particularly with regard to its technology, quality, prices, delivery reliability and service.
- 8.2 If a competitor of the Supplier submits a better offer to us for the manufacture of the Products, we shall have the right to present such offer (the "**competitive offer**") to the Supplier, and to request that the Supplier match the terms and conditions of such competitive offer within a period of three (3) months. The Supplier is obligated to notify us in writing within one (1) month after receiving the above-mentioned request to inform us whether the Supplier is prepared to match the terms and conditions of the competitive offer within the period of three (3) months specified above. If the Supplier does not agree in writing, and within the period prescribed, to match the terms and conditions of the competitive offer, we shall have the right to cancel any/all orders for the Products previously ordered which are affected by the competitive offer upon three (3) months' notice. If the Supplier does agree in writing, and within the period prescribed, to match the terms and conditions of the competitive offer, but subsequently fails to do so, and within the period prescribed, PWO shall have the right to cancel any/all of orders for Products affected by the competitive offer without notice.

## **9 Quality, environment and documentation**

- 9.1 When delivering the Products, the Supplier shall comply with all applicable Laws, as well as any/all other applicable legislation regarding environment and safety legislation, e.g., the Global Automotive Declarable Substance List (GADSL), and industry standards.
- 9.2 The Supplier shall immediately inform us of any relevant or necessary changes to any Products, their availability, possible use and/or quality caused by any applicable Laws, and shall coordinate appropriate measures to ensure that the Products, their availability, possible use and/or quality are compliant with all applicable Laws in individual cases. The same applies as soon as, and insofar as, the Supplier recognizes that such changes will occur.
- 9.3 The Supplier represents and warrants to us that it possesses all required permits for its processes and equipment for manufacturing the Products and it is the Supplier's sole responsibility to ensure that it has any and all of such required permits in full force and effect at all times. The Supplier is responsible for the provision of material data sheets in the IMDS (International Material Data System). The material data sheets for existing serial parts is maintained and updated within an appropriate period at our request. The material data sheets for new parts and with changes to serial parts are provided with the sampling inspection. The material data sheets shall be sent to us. Material data sheets and/or EC safety data sheets are to be maintained for the Products and presented to us at our request in writing. Upon delivery of hazardous materials, EC safety data sheets shall be maintained by the Supplier and attached to each delivery of the Products.
- 9.4 Unless otherwise specified in the order, reference shall be made to the VDA volume entitled "Sicherung der Qualität von Lieferungen" (Ensuring the Quality of Consignments) with respect to the initial sample inspection. Regardless of this, the Supplier must continuously verify the quality of the Products. The Supplier and PWO shall keep each other informed about any options of improving the quality of the Products.
- 9.5 If the type and scope of the tests, the testing materials and the testing methods have not been agreed upon between the Supplier and PWO, we are willing to discuss the tests with the Supplier at its request within the scope of our knowledge, experience and possibilities in order to determine the required state of the art in test engineering. In addition, we shall inform the Supplier of the relevant safety regulations on request.

9.6 Furthermore, the Supplier shall comply with the VDA volume titled "Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen" (Documentation and Archiving - Code of practice for the documentation and archiving of quality requirements and quality records) and particularly keep special records to show how, in what way and by whom the Products have been inspected and what results the required quality tests have delivered. The test records must be maintained by the Supplier for ten (10) years and shall be submitted to us on request in writing. The Supplier shall impose the same obligations on its own suppliers as far as the Laws permit. The duty to keep documentation applies to all Products unless an exception agreement has been made in writing.

9.7 To the extent to which any public authorities or public clients may wish to examine our production process and production documents in order to subsequently verify certain requirements, the Supplier shall, upon PWO's written request, agree to grant such public authorities or public clients the same rights at its factory and provide them with all reasonable support in connection therewith.

## **10 Activities at PWO**

Any persons employed or working at our facilities in order to meet the Supplier's obligations are subject to the provisions and regulations of our guidelines for external companies and our applicable instructions with regard to accident prevention, work safety regulations, environmental or other regulations. Dangerous materials may only be used at our facilities in co-ordination with our experts and must be labelled accordingly.

## **11 Material defects**

11.1 We will examine the Products within a reasonable time after they have arrived at the destination specified in the order to determine whether the correct quantity and type of Products has been delivered and whether the Products show any externally identifiable damage or defects. We shall immediately notify the Supplier in writing of any damage or defects in the Products as soon as they have been detected in the ordinary course of business or operation of the Products. In this respect, the Supplier shall raise no objection as to a delayed complaint.

11.2 We shall have the right to exercise any and all of our legal rights, including a claim for damages in respect of defects in the Products. If there is any indication of a defect of any Products within twelve (12) months of the date of delivery to us, it shall be presumed that such Products were already defective at the time of the transfer of risk, unless such a presumption is inconsistent with the nature of the Products or the type of defect.

11.3 If the Supplier has made an unsuccessful attempt to remedy the defect to our reasonable satisfaction, has unjustifiably refused to remedy the defect or allowed a reasonable extended deadline (agreed to by the parties) to expire without action, we shall have the right, in addition to any and all other remedies we may have, to rectify the defect ourselves or to have it rectified and to claim compensation for the expenses incurred. We shall have the same right in urgent cases, particularly in order to avert acute dangers or to avoid greater damage.

11.4 If the defect is not found until after production using the Products has been commenced by us, we shall also have the right to claim against the Supplier for any additional expenses incurred.

## **12 Product liability, indemnification, and third-party insurance coverage**

- 12.1 In as far as the Supplier is responsible for damage or defect to any Products, the Supplier shall indemnify PWO from and against any third-party claims for damages on first written demand by PWO and from and against any demands for payment, costs, expenses, liabilities, losses and damages arising therefrom.
- 12.2 Without limiting the generality of section 12.1, the Supplier must also reimburse PWO for expenses, demands for payment, costs, liabilities, losses and damages resulting from or in connection with any recall that we carry out, acting reasonably, in connection with any damage or defect in the Products. We will notify the Supplier in writing of the nature and scope of the recall measures to be carried out – insofar as this is possible and reasonable – and give the Supplier the opportunity to submit its comments prior to commencement of the recall.
- 12.3 The Supplier undertakes and agrees to maintain a product liability insurance policy with sufficient coverage for personal injury and damage to property, and to provide us with evidence of such insurance upon written request. The Supplier shall ensure that we are shown as an additional insured on such policy or policies of insurance. This shall not affect any further claims for damages that we may have.

### **13 Production materials**

- 13.1 The ownership of models, moulds, templates, samples, tools, manuals, plans and other production materials (collectively the “**production materials**”) that the Supplier produces or procures in order to complete the order shall be transferred to us as soon as they have been produced, regardless of whether or not we are charged a portion of the costs for such production. It is hereby agreed with the Supplier that instead of handing over possession of the production materials to us, the Supplier shall store them on our behalf until such time as the order has been completed or until we otherwise advise the Supplier in writing, whichever occurs first. Any production materials that we provide shall remain our property and may not be used for any other purposes. The Supplier shall bear the costs of repair and replacement for such production materials, as well as the risk of destruction and deterioration of the production materials. Production materials may neither be destroyed, sold, pledged, encumbered, passed on nor otherwise disposed of or copied without our prior written consent.
- 13.3 Any/all production materials may only be used for orders or deliveries to third parties if we have first given our written consent. Notwithstanding that we may have given our consent in accordance with the above, the provisions under section 7 regarding confidentiality shall also apply to any such use of the production materials.

### **14 Initial sample inspection**

On the first order or in case of any changes to the execution of orders, the Supplier has to provide us with at least one sample of the Products with an initial sample inspection report before the Supplier commences final production of the Products. For greater certainty, if the above applies, the final order will be conditional upon the sample being approved by us.

### **15 Force majeure**

Neither PWO nor the Supplier shall be liable to the other party for the failure to perform, or delay in the performing of, any of their respective obligations hereunder, or under the orders, if such failure is caused by any direct or indirect cause beyond the reasonable control of PWO or the Supplier and which, in the circumstances could not reasonably have been prevented by

PWO or the Supplier including, but not limited to, fire, floods, earthquakes, windstorms, snow storms, lightning strikes, electrostatic discharges, natural disasters or other acts of God, strikes, lockouts, the making or consequences of any governmental or regulatory order or action, wars or threats of war, or delays in transportation (each individually, a "**Force Majeure Event**") or unavailability of materials or equipment due to what would otherwise be a Force Majeure Event. Notwithstanding the foregoing, in no event shall a lack of funds constitute or be deemed to have created a Force Majeure Event. In the event of a failure to perform or delay in performance due to a Force Majeure Event, performance by the affected Contracting Party of its affected obligations hereunder, or under the orders, (other than the payment of money) shall be excused for the reasonable length of time necessary to overcome the effect of such Force Majeure Event. Notwithstanding the foregoing, if a Force Majeure Event prevents, or delays, the Supplier from performing its obligations hereunder, or under the orders, PWO shall be entitled to procure the products (including products comparable/similar to the products) from other sources for the duration of the Force Majeure Event and to reduce the delivery quantities indicated in the orders and/or delivery schedules without any liability towards the Supplier and, in any event, PWO might without prejudice to its other rights terminate any affected orders in part or in full without any obligation to reimburse the Supplier for any potentially resulting damages.

## **16 Reservation of title**

- 16.1 In the event that we provide the Supplier with parts ("**PWO-parts**"), we hereby reserve title to PWO-parts. If PWO-parts are processed or reworked by the Supplier, this shall be done on our behalf, but only if we have given our prior written consent. If PWO-parts are processed with other parts that do not belong to us, we shall acquire co-ownership of the new parts in the same ratio as that between the value of the PWO-parts and the other parts processed at the time of processing.
- 16.2 The same shall apply in the case of amalgamation of PWO-parts with parts that are not owned by us. If the amalgamation is such that the Supplier's Products are regarded as the main item, it is deemed agreed that the Supplier shall transfer a co-ownership share to us and shall keep the resulting item of which we are the sole owners or the co-owners on our behalf.

## **17 Right of retention and set-off**

The Supplier shall only be entitled to set-off amounts claimed by it against amounts owing to PWO ("**Counterclaims**") if the Supplier's Counterclaims have been established as final and absolute by a court of competent jurisdiction and are no longer subject to any appeal, or are undisputed or have been acknowledged by PWO. Furthermore, the Supplier shall only be entitled to exercise a right of retention or set-off if the Supplier's Counterclaims are based on and arise out of the same contractual relationship as that giving rise to the payment due to PWO against which the retention or set-off is claimed. The Supplier shall never have the right to exercise any rights of retention or set-off against PWO's request for delivery of production materials in specie.

## **18 Compliance with laws**

The Supplier is obligated to refrain from committing any acts that might result in any civil, administrative or criminal liability due to fraud or breach of trust, insolvency offences, criminal acts against free competition, granting of an undue advantage or bribing of persons employed by the Supplier or third parties. In the event of any breach of this clause, we shall be entitled to terminate all legal transactions with the Supplier without notice or

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compensation and to stop all negotiations with the Supplier. Notwithstanding the above, the Supplier shall be obligated to comply with all Laws and industry standards that affect the Supplier and its business relationship with us.

**19 General provisions**

19.1 The place of performance for payments for both parties is Kitchener, Ontario, Canada.

19.2 All legal relations between PWO and the Supplier shall be governed by the laws, and attorn to the Courts, of Ontario, Canada exclusively, excluding its conflict of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG). Notwithstanding the foregoing, PWO and the Supplier attorn to the exclusive jurisdiction of the Courts of the Province of Ontario, Canada.

19.3 If any term or provision contained in these GTCP is determined to be void, invalid or unenforceable in whole or in part for any reason whatsoever, it shall not be deemed to affect or impair the validity or enforce ability of any other covenant or provisions in this Agreement, and such unenforceable covenant or provisions or part thereof shall be treated as severable from the remainder of these GTCP, unless such covenant or provision was fundamental to the formation of these GTCP.

19.4 These GTCP are indivisible and non-transferable and may not be assigned or transferred in whole or in part by either PWO or the Supplier.

19.5 These GTCP shall enure to the benefit of and be binding upon PWO and the Supplier and their respective heirs, executors, administrators, legal and personal representatives, successors and permitted assigns.

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